

STATE OF VERMONT
PUBLIC SERVICE BOARD

Dig Safe Notice No. 638

In Re Mario Paul Excavating, Inc., Alleged Violation of)
July 29, 2009, as reported by Vermont Electric)
Cooperative, Inc.)

Order entered: 4/8/2011

ORDER RE: NOTICE OF PROBABLE VIOLATION

Background

1. Pursuant to 30 V.S.A. § 7001 et. seq., and Vermont Public Service Board Rule 3.800, the Vermont Department of Public Service ("Department") issued a Notice of Probable Violation of Underground Utility Damage Prevention System ("NOPV") to Mario Paul Excavating, Inc. ("Respondent").
2. Incident Date: July 29, 2009
3. Incident Location: 4850 Route 242 Village Town House 105, Jay, VT
4. Name and Address of Company that Reported the Incident to the Department: Vermont Electric Cooperative, Inc., 42 Wescom Road, Johnson, VT 05656
5. Date Incident Reported to Effected Utility: July 29, 2009
6. Date NOPV issued by Department: December 24, 2009 (#1661)
7. Department's Statement of Evidence Supporting the Alleged Violation: "The Department of Public Service investigated this incident and determined the following details. On 7/29/09, Mario Paul Excavating was excavating to install a sewer line at this site. Mario Paul Excavating did not have a valid Digsafe ticket for this site. The ticket originally called in for this site expired on 6/28/09. Mario Paul Excavating did not notify the one call center prior to renew the ticket or request a new ticket. During the course of the excavation, an unmarked Vermont Electric Coop distribution wire was damaged, causing a loss of service to several customers for one hour. The site was not marked out because no notification was made to the one call system prior to excavating. Mario Paul Excavating notified VEC of the damaged facility. The Department of Public Service issued 0 Notices of Probable Violation (NOPV's) to Mario Paul Excavating, Inc., during the 12 months preceding this incident."

8. Statute, Rule, Regulation or Order Allegedly violated: 30 V.S.A. § 7004
9. The Department's Recommended Remedial Action(s) (Including Civil Penalties): Civil penalty in the amount of Five Hundred Dollars (\$500.00), and attendance at a Department-approved underground damage prevention seminar.
10. The NOPV, along with instructions concerning how to respond to the NOPV, was sent to Mario Paul Excavating, Inc., on December 24, 2009.¹ To date, Mario Paul Excavating, Inc., has not filed a response to the NOPV.

Conclusion and Order

Public Service Board ("Board") Rule 3.807(C) provides:

Within 30 days of receipt of a Notice of Probable Violation, any person who is the subject of an enforcement proceeding pursuant to that Notice shall make a written response to the Department and to the Board, with a copy to the Company that reported the alleged violation.

Accordingly, we conclude that it is appropriate to make a binding disposition of this matter *by default*, pursuant to 3 V.S.A. Section 809(d).

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

(1) Within thirty days of the date of this Order, Mario Paul Excavating, Inc., shall pay a civil penalty in the amount of Five Hundred Dollars (\$500.00) by submitting to the Public Service Board a check in that amount made payable to the State of Vermont, and sent to the Public Service Board at 112 State Street, Montpelier, VT 05620-2701; and

(2) Mario Paul Excavating, Inc., shall attend an Underground Damage Prevention Seminar at such time and place as determined by the Vermont Department of Public Service.

1. Letter of Hans E. Mertens, dated December 24, 2009.

Dated at Montpelier, Vermont, this 8th day of April, 2011.

<u>s/James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: April 8, 2011

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.